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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,958	10/20/2005	Robert Casper	101648.55966US	3066

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EXAMINER	
PINKNEY, DAWAYNE	

ART UNIT	PAPER NUMBER
2873	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/525,958	CASPER ET AL.	
	Examiner	Art Unit	
	DaWayne A. Pinkney	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 7-18* is/are pending in the application.

4a) Of the above claim(s) *4-6* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 7-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02/28/2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *07/17/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-3, 7-12 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Johansen et al. (US 5, 400, 175).

Regarding **claim 1**, Johansen discloses, a device for inhibiting melatonin suppressing light comprising:

means for selectively blocking light (Column 1, lines 21-25) having a wavelength less than at or about 530 nm (Column 3, lines 15-20, and Column 6, lines 44-51).

Regarding **claim 2**, Johansen discloses, a device according to claim 1, wherein the means for selectively blocking light is an optical filter (Column 7, lines 13-19, Column 16, lines 28-30 and Claim 1).

Regarding **claim 3**, Johansen discloses, a device according to claim 2, comprising the optical filter, which includes a polarizing layer (Column 15, lines 28–37 and Column 16, lines 23-24, lines 49-51 and Claims 2 and 3).

Regarding **claim 7**, Johansen discloses, a device according to claim 3, wherein the polarizing layer is a polarizing film (Column 3, lines 15-25 and Column 15, lines 28-42).

Regarding **claim 8**, Johansen discloses, a device according to claim 1, wherein the device further comprises an ultraviolet light absorber (Column 1, lines 21-25, Column 2, lines 48-54 and Column 15, lines 28-31).

Regarding **claim 9**, Johansen discloses, a device according to claim 1, comprising at least one of eyewear, a light bulb, a light cover and a lens (Column 1, lines 21-25, Column 3, lines 15-16 and Column 16, lines 44-45).

Regarding **claim 10**, Johansen discloses, A lens operable by a user who is exposed to melatonin suppressing light at peak melatonin production times (Column 1, lines 21-25), the lens comprising an optical filter operable to selectively block light having a wavelength less than at or about 530 nm (Column 3, lines 15-20, Column 6, lines 44-51 and Column 15, lines 28-42).

Regarding **claim 11**, Johansen discloses, a lens according to claim 10, wherein the lens is incorporated in eyewear (Column 3, lines 15-16 and Column 16, lines 44-45).

Regarding **claim 12**, Johansen discloses, a lens according to claim 11, wherein the eyewear is selected from the group consisting of spectacles, goggles, contact lenses and safety glasses (Column 1, lines 21-25, Column 3, lines 15-16 and Column 16, lines 44-45).

Regarding **claim 17**, Johansen discloses, The use of a device according to claim 2, for the prevention or the suppression of melatonin production in a human, the filter being operable to selectively block light (Column 1, lines 21-25 and Column 15, lines 28–37), having a wavelength capable of suppressing melatonin production(Column 6, lines 44-51), from reaching the retina in a human (Column 17, lines 21-37).

Regarding **claim 18**, Johansen discloses, The use of a device according to claim 1, for the prevention or the suppression of melatonin production in a human, the filter being operable to selectively block light (Column 1, lines 21-25 and Column 15, lines 28–37), having a wavelength capable of suppressing melatonin production(Column 6, lines 44-51), from reaching the retina in a human (Column 17, lines 21-37).

3. Claims 13-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Searfoss, III (US 6, 902, 296).

Regarding **claim 13**, Searfoss teaches, a light device (Column 2, lines 8-10) comprising an optical filter operable to selectively block light from the light device (Column 4, lines 60-65) having a wavelength capable of promoting melatonin production in a human of less than at or about 530 nm (Column 1, lines 21-43, Column 2, lines 49-51, Column 4, lines 60-66, and Column 5, lines 16-19).

Regarding **claim 14**, Searfoss discloses, A light device according to claim 13, wherein the light device is chosen from an incandescent light source, a fluorescent light source or any other artificial light source (Column 4,lines 60-65).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Searfoss, III (US 6, 902, 296).

The cited primary reference, Searfoss, remains as applied to **claim 13 above**.

The cited primary reference does not teach the optical filter is a coating on at least one surface of the device.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an optical filter that is a coating on at least one surface of the device

because all light devices having light filtering properties include coatings (absorption, interference, etc.) that provide the light filtering.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirschner (US 6, 019, 476).

Regarding **claim 16**, Kirschner discloses, a light cover for use with a light device, the cover comprising: an optical filter operable to selectively block light from the light device (Column 1, lines 15-16) having a wavelength capable of suppressing melatonin production in a human (Column 1, lines 12-15 and lines 55-62), the cover being operable to releasably attach to the light source to channel the light emitted from the light source there through (Column 4, lines 22-23).

The cited primary reference does not teach that the optical filter is operable to selectively block light from the light device having a wavelength capable of suppressing melatonin production in a human of less than at or about 530 nm. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the optical filter is operable to selectively block light from the light device having a wavelength capable of suppressing melatonin production in a human of less than at or about 530 nm since it is known to one of ordinary skill in the art that light having a wavelength of less than at or about 530 nm is effective in inhibiting melatonin production.

This is evidenced as Gott (US 5, 274, 403) teaches that "melatonin is most effectively suppressed at those wavelengths peaking at substantially 509 nanometers, i.e., 500-520 nanometers."

Response to Arguments

8. Applicant's arguments filed 07/16/2007 have been fully considered but they are not persuasive.

9. In response to applicants arguments that Johansen does not teach a means for selectively blocking light having a wavelength less than at or about 530 nm. Examiner notes that Johansen teaches a means for selectively blocking light having a wavelength less than at or about 530 nm Column 1, lines 21-25, Column 3, lines 15-20, and Column 6, lines 44-51).

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., substantially blocking being defined as blocking over 50 percent of the incident wavelength at each and every wavelength) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

11. In response to applicant's arguments that Johansen is directed to a different art field, specifically, the field of sunglasses and that sunglasses are glasses worn during the day to limit transmission of natural sunlight. Examiner points out that page 6, lines 18-23 of the instant specification states that "Eyewear is used as a broad term to encompass such items as eyeglasses, goggles, contact lenses and the like, that are used in connection with the eyes of a user to either shield/protect the eyes from harmful substances, for example chemicals in the context of goggles or to enhance the eyesight of the user, for example contact lenses. It will be understood that the term "eyewear" is "not limited to the above examples, and describes any device used in

connection with the eyes that contains a viewing window of sorts". Therefore, sunglasses are within the same field of art as sunglasses are a type of "eyewear" or "eyeglasses".

12. In response to applicant's arguments that Searfoss fails to teach a device that selectively blocks light having a wavelength less than at or about 530 nm and teaches away from the subject matter of the present invention. Examiner points out that Searfoss teaches a light device (Column 2, lines 8-10) having a wavelength capable of promoting melatonin production in a human of less than at or about 530 nm (Column 1, lines 21-43, Column 2, lines 49-51, Column 4, lines 60-66, and Column 5, lines 16-19).

13. In response to applicant's arguments that Kirschner has no teachings related to blocking certain wavelengths of light in order to inhibit the suppression of melatonin production caused by exposure to light at night. Examiner points out that Kirschner teaches a light cover for use with a light device, the cover comprising: an optical filter operable to selectively block light from the light device (Column 1, lines 15-16) having a wavelength capable of suppressing melatonin production in a human (Column 1, lines 12-15 and lines 55-62).

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DaWayne A. Pinkney whose telephone number is (571) 270-1305. The examiner can normally be reached on Monday-Thurs. 8 a.m.- 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DaWayne A. Pinkney
DAP
07/23/2007

Scott J. Sugarman
Primary Examiner